

**FARAD CONTINUATION SHEET NO.**  
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**APPELLATE SIDE**  
**NAGPUR BENCH, NAGPUR**

Second Appeal No. 84/2007

Appeal  
Application No.  
Writ petition

District :  
of 200

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders or directions  
and Registrar's orders.

Court's or Judge's orders

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**CORAM : Smt. V. A. Naik, J.**  
**DATED : April 13, 2007.**

Heard Shri Rajkarne for the  
appellant, and Mrs. Dharmadhikari for the  
respondent.

The appellant is the original  
defendant. A suit was filed by the plaintiff for  
possession of the suit property, on the basis of  
title. The claim of the plaintiff was denied by  
the defendant and the defendant pleaded that  
she had become the owner of the suit  
property by adverse possession. The trial  
Court held that the plaintiff had proved the  
title to the suit property and the defendant  
failed to prove that she became the owner of  
the suit property by adverse possession. The  
Court granted a declaration of ownership in  
favour of the plaintiff. However, the suit filed  
by the plaintiff for possession of the suit  
property was dismissed solely on the ground

that the suit was barred by limitation.

In an appeal filed by the plaintiff against the judgment passed by the trial Court, the appellate Court reversed the findings recorded by the trial Court insofar as the question of limitation was concerned and held that the plaintiff was entitled to a decree of possession as prayed for. The findings recorded by the trial Court about the ownership of the plaintiff and that the defendant did not become the owner of the suit property by adverse possession, were upheld.

It appears from the judgment passed by the trial Court that the trial Court clearly erred in holding that the suit was barred by limitation and, therefore, the appellate Court rightly reversed the aforesaid findings. Though no plea of limitation was raised in the written statement, on the basis of certain evidence on record, the trial Court held that the suit was barred by limitation as the defendant was in possession of the suit land since 1965 onwards. The trial Court held that the claim of the plaintiff was not within limitation for the relief of possession as the plaintiff had failed to prove the encroachment by defendant in the year 1985-86. The trial

Court clearly misdirected itself while recording the finding that the suit was barred by limitation and, therefore, the appellate Court, on consideration of the evidence on record, came to a conclusion that the suit was filed well within time. The appellate Court considered the fact that the suit was for possession based on title. The appellate Court, therefore, held that the provisions of Article 65 of the Limitation Act are applicable to the facts of the case. According to the appellate Court, the time for computing the period of limitation would start running from the date the possession of the defendant became adverse to the plaintiff. Since both the Courts have concurrently held that the defendant had failed to prove adverse possession over the suit property, the appellate Court was justified in holding that the suit was filed within the prescribed period of limitation. The trial Court clearly erred in holding that the suit was barred by limitation by relying only on two facts i.e. the possession of the defendants since the year 1965 and the fact that the plaintiff had not proved that the defendant had encroached upon the land since 1987-88. According to the appellate Court, the first overt act, if any, to show that

there was any animus to hold the land adversely to the true owner was after the year 1992. Thus, applying what is laid down in Article 65 of the Limitation Act, the appellate Court reversed the findings recorded by the trial Court, to hold that the suit was filed well within time and the plaintiff was entitled to a decree for grant of possession.

The findings recorded by the trial Court on all other issues except the question of limitation and the findings recorded by the appellate Court on all the issues, do not give rise to any substantial question of law. The second appeal is, therefore, dismissed with no order as to costs.

**JUDGE**

RMP